



Dora
Department of Regulatory Agencies

MARKET CONDUCT EXAMINATION REPORT
Dated October 21, 2011

**COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH
DECEMBER 31, 2009**

BRISTOL WEST INSURANCE COMPANY

**5701 Stirling Road
Davie, Florida 33314**

**NAIC Company Code 19658
NAIC Group Code 0212**



CONDUCTED BY:

COLORADO DIVISION OF INSURANCE

**BRISTOL WEST INSURANCE COMPANY
5701 Stirling Road
Davie, Florida 33314**

**MARKET CONDUCT EXAMINATION REPORT
DATED OCTOBER 21, 2011
COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH DECEMBER 31, 2009**

**Examination Performed by:
State Market Conduct Examiners**

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TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. COMPANY PROFILE	4
II. PURPOSE AND SCOPE OF EXAMINATION	7
III. EXAMINERS' METHODOLOGY	8
IV. EXAMINATION REPORT SUMMARY	13
V. FACTUAL FINDINGS	15
A. Company Operations and Management	16
E. Contract Forms	26
G. Underwriting - New Business and Renewals	36
H. Underwriting - Cancellations, Declinations, Nonrenewals, Rescissions	50
J. Claims	55
VI. SUMMARY OF ISSUES AND RECOMMENDATIONS	62
VII. EXAMINATION REPORT SUBMISSION	64

COMPANY PROFILE

The following profile is based on information provided by Bristol West Insurance Company and has not been independently verified by the Division:

Bristol West Insurance Company ("Bristol West" or "Company") was incorporated in Pennsylvania on February 9, 1968, and commenced business on June 10, 1968. Effective as of March 31, 2001, the Company was acquired by Coast National Insurance Company. Effective November 21, 2001, the Company's name was changed from Reliance Insurance Company to Bristol West Insurance Company. Bristol West completed a change of its state of domicile from Pennsylvania to Ohio, effective September 27, 2006.

Bristol West was originally licensed in the State of Colorado on May 22, 2000, and began operations in Colorado on March 23, 2004.

Bristol West is licensed in all states except: Alaska, Arizona, California, Connecticut, Massachusetts, Minnesota, Mississippi, Nevada, New Jersey, New York, North Carolina, Oregon, Texas, Washington and Wyoming. Bristol West currently operates in Alabama, Arkansas, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Missouri, Montana, North Dakota, Nebraska, New Hampshire, New Mexico, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia and Wisconsin.

On March 1, 2007, Bristol West Holdings, Inc. ("BRW"), the ultimate parent corporation of Bristol West, entered into a merger agreement with Farmers Group, Inc. ("FGI"). FGI is a Nevada corporation, which, along with its subsidiaries, provides insurance management services to members of the Farmers Insurance Exchange ("FIE"), Truck Insurance Exchange ("Truck") and Fire Insurance Exchange ("Fire") (collectively referred to as the "Exchanges").

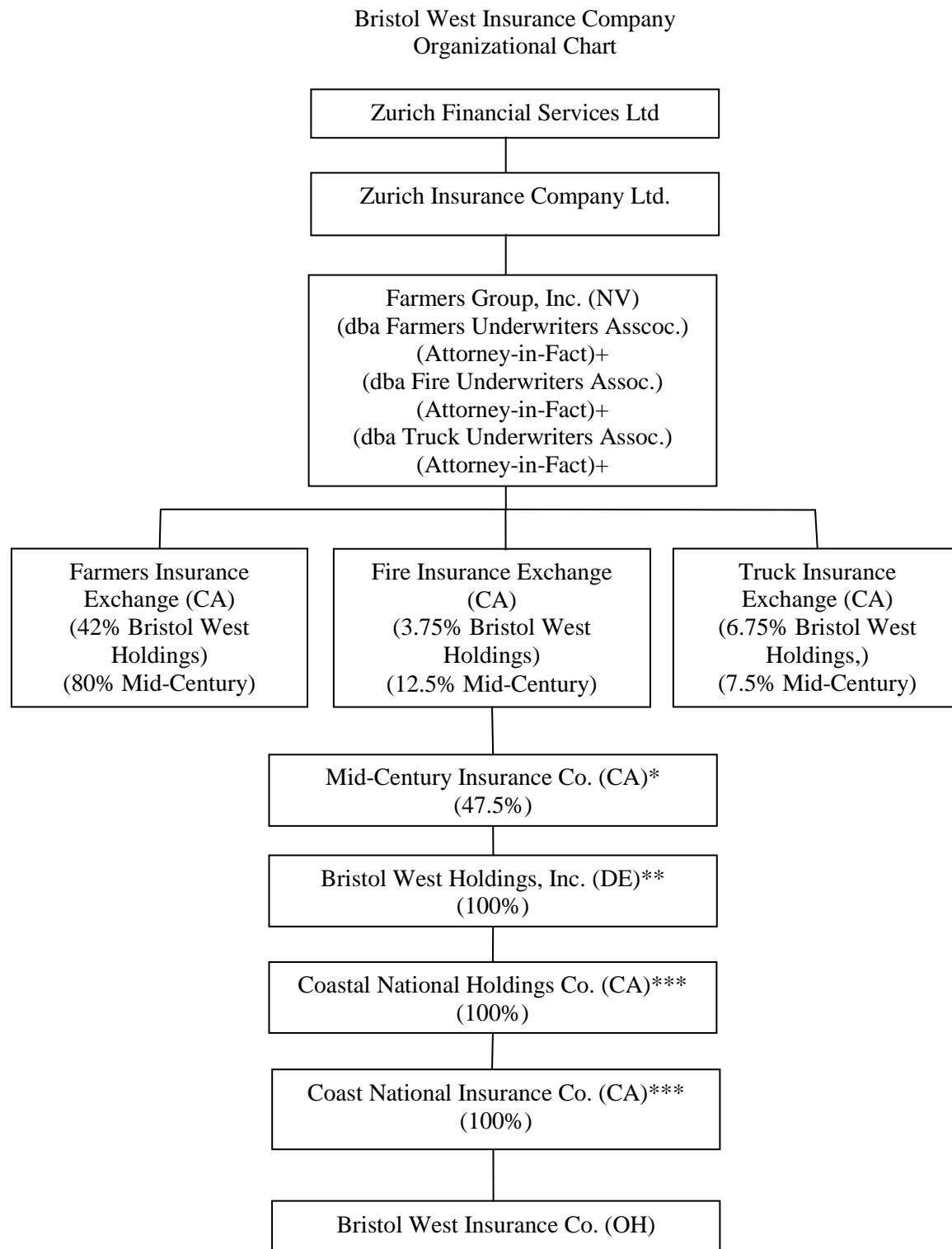
During the examination period of January 1, 2009 to December 31 2009, Bristol West had operations in Colorado to support its Prima, Select and Select 2.5 products.

Premium and Market Share as of December 31, 2009:

Private Passenger Auto Written Premium:	\$61,519,193*
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Private Passenger Auto Market Share:	2.23%*
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* As shown in the 2009 Edition of the Colorado Insurance Industry Statistical Report



+Each of these underwriting associations is an “attorney-in-fact” for each “Exchange” below it with a similar name.

*Mid-Century Insurance Company is jointly owned by Farmers Insurance Exchange, Fire Insurance Exchange and Truck Insurance Exchange.

**Bristol West Holdings, Inc. is jointly owned by Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange and Mid-Century Insurance Company, with the three “Exchanges” actually owning more than the percentage shown due to their joint ownership of Mid-Century Insurance Company, which owns 47.5 % of Bristol West Holdings, Inc.

*** Bristol West Holdings, Inc. is full owner of Coastal National Holdings Company, which is full owner of Coast National Insurance Company, which is full owner of Bristol West Insurance Company.

PURPOSE AND SCOPE

State market conduct examiners with the Colorado Division of Insurance (“Division”), who were assisted by an independent contract examiner, reviewed certain business practices of Bristol West. This market conduct examination (“MCE”) was performed in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205 and 10-3-1106, C.R.S., that empower the Commissioner to examine any entity engaged in the business of insurance. All work product developed in producing this report is the sole property of the Division

The purpose of this examination was to determine Bristol West's compliance with Colorado insurance laws related to private passenger automobile business in Colorado. Examination information contained in this report should serve only these purposes. The findings and conclusions, including the Final Agency Order arising out of this examination, are public record.

Examiners conducted the examination in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners (NAIC). The examiners relied primarily on records and materials maintained and/or supplied by Bristol West and its agents. The market conduct examination covered the twelve (12) month period from January 1, 2009, through December 31, 2009.

The examination included review of the following:

- Company Operations and Management
- Complaints
- Contract Forms
- Rates
- Underwriting New Business and Renewals
- Cancellations, Declinations, Nonrenewals, Rescissions
- Claims

The examination report is written by exception. References to additional practices, procedures, or files that did not contain any improprieties were omitted. Based on review of these areas, comment forms were prepared for Bristol West identifying any concerns and/or discrepancies. The comment forms contain a section that permitted Bristol West to submit a written response to the examiners' comments.

For the period under examination, the examiners included statutory citations and regulatory references related to private passenger automobile insurance laws. Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of Bristol West. Failure to identify specific practices of Bristol West does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

EXAMINERS' METHODOLOGY

The examiners reviewed Bristol West's business practices to determine compliance with Colorado insurance laws as outlined below.

Law or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected fraud – legislative declaration.
Section 10-1-204, C.R.S.	Conduct of examinations.
Section 10-2-704, C.R.S.	Fiduciary responsibilities.
Section 10-3-1104, C.R.S.	Unfair methods of competition - unfair or deceptive acts or practices.
Section 10-3-1304, C.R.S.	Identification of parts.
Section 10-3-1305, C.R.S.	Disclosure.
Section 10-4-116 C.R.S.	Use of credit information.
Section 10-4-119, C.R.S.	Monthly and electronic payment of premiums.
Section 10-4-120, C.R.S.	Unfair or discriminatory trade practices – legislative declaration.
Section 10-4-401, C.R.S.	Purpose – applicability.
Section 10-4-402, C.R.S.	Definitions.
Section 10-4-403, C.R.S.	Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation.
Section 10-4-404, C.R.S.	Rate administration.
Section 10-4-404.5, C.R.S.	Rating plans – property and casualty type II insurers – rules.
Section 10-4-407, C.R.S.	Hearings.
Section 10-4-415, C.R.S.	Prohibition of anticompetitive behavior.
Section 10-4-416, C.R.S.	Prohibited changes in rates or coverages.
Section 10-4-417, C.R.S.	False or misleading information.
Section 10-4-418, C.R.S.	Enforcement procedures – penalties.
Section 10-4-601, C.R.S.	Definitions.
Section 10-4-602, C.R.S.	Basis for cancellation.
Section 10-4-603, C.R.S.	Notice.
Section 10-4-604, C.R.S.	Nonrenewal.
Section 10-4-604.5, C.R.S.	Issuance or renewal of insurance policies – proof of insurance provided by certificate, card, or other media.
Section 10-4-606, C.R.S.	Further notice.
Section 10-4-609, C.R.S.	Insurance protection against uninsured motorists – applicability.
Section 10-4-610, C.R.S.	Property damage protection against uninsured motorists.
Section 10-4-611, C.R.S.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613, C.R.S.	Glass repair and replacement.
Section 10-4-614, C.R.S.	Inflatable restraint system – replacement – verification of claims.
Section 10-4-616, C.R.S.	Disclosure of credit reports.
Section 10-4-619, C.R.S.	Coverage compulsory.
Section 10-4-620, C.R.S.	Required coverage.
Section 10-4-621, C.R.S.	Required coverages are minimum.
Section 10-4-622, C.R.S.	Required provisions for intrastate and interstate operation.
Section 10-4-623, C.R.S.	Conditions and exclusions.
Section 10-4-625, C.R.S.	Premium payments.

Section 10-4-626, C.R.S.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6.
Section 10-4-627, C.R.S.	Discriminatory standards – premiums – surcharges – proof of financial responsibility requirements.
Section 10-4-628, C.R.S.	Refusal to write – changes in – cancellation – nonrenewal of policies prohibited.
Section 10-4-629, C.R.S.	Cancellation – renewal – reclassification.
Section 10-4-630, C.R.S.	Exclusion of named driver.
Section 10-4-632, C.R.S.	Reduction in rates for drivers aged fifty-five years or older who complete driver's education course – legislative declaration.
Section 10-4-633, C.R.S.	Certification of policy and notice forms.
Section 10-4-634, C.R.S.	Assignment of payment for covered benefits.
Section 10-4-635, C.R.S.	Medical payment coverage – disclosure – definitions.
Section 10-4-636, C.R.S.	Disclosure requirements for automobile insurance products offered – rules.
Section 10-4-637, C.R.S.	No discrimination by profession.
Section 10-4-638, C.R.S.	Retroactive adjustment of health care service claims.
Section 10-4-639, C.R.S.	Claims practices for property damage.
Section 10-4-640, C.R.S.	Operator's policy of insurance.
Section 10-4-641, C.R.S.	Rules – medical payments coverage.
Section 10-4-642, C.R.S.	Prompt payment of direct benefits – legislative declaration – definitions.
Section 10-4-643, C.R.S.	Electronic claim forms – rules.
Insurance Regulation 1-1-6	Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act"
Insurance Regulation 1-1-7	MARKET CONDUCT RECORD RETENTION
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Insurance Regulation 5-1-2	Application and Binder Forms
Insurance Regulation 5-1-10	RATE AND RULE FILING SUBMISSION REQUIREMENTS PROPERTY AND CASUALTY INSURANCE
Insurance Regulation 5-1-14	Penalties For Failure To Promptly Address Property And Casualty First Party Claims
Insurance Regulation 5-2-2	CONCERNING RENEWAL OF AUTOMOBILE INSURANCE POLICIES – EXCLUDED NAMED DRIVERS
Insurance Regulation 5-2-12	CONCERNING AUTOMOBILE INSURANCE CONSUMER PROTECTIONS
Insurance Regulation 5-2-13	Automobile Insurance Coverage For U.S. Military Personnel Called To Active Duty
Insurance Regulation 5-2-15	CONCERNING CONSUMER PROTECTION FOR VEHICLE VALUATION AND RENTAL REIMBURSEMENT
Insurance Regulation 5-2-16	DISCLOSURE REQUIREMENTS FOR PRIVATE PASSENGER AUTOMOBILE POLICIES
Insurance Regulation 6-2-1	COMPLAINT RECORD MAINTENANCE

Prior Examinations

Bristol West was the subject of a previous market conduct examination by the Division which was completed September 29, 2005, for the period of March 1, 2004 to March 1, 2005.

Sampling Methodology

Bristol West provided three (3) unique populations of policy, application and claim files. Bristol West also provided unique subset populations of paid and denied claims and medical payments claims within the total claims population. The examiners used ACL™ software to select random samples from those total populations, in accordance with the sampling methodology and sample sizes as set forth in the 2009 NAIC Market Regulation Handbook ("Handbook").

When sampling was involved, the Division established an error tolerance level of seven percent (7%) for claims and ten percent (10%) for other samples to determine reportable exceptions, in accordance with the Handbook. However, if the examiners determined an issue was systemic, or the sampling process precluded establishment of an exception percentage, they did not utilize an error tolerance percentage.

Where the error rates of the sample indicated it would be appropriate to select an additional sample per the sampling instructions in the Handbook, but the initial results were conclusive, Bristol West was afforded the opportunity to agree that the initial sample was an accurate reflection of the finding, or request that an additional sample be selected. In each case, Bristol West indicated that an additional sample was not needed.

The Division allowed an error tolerance level of plus or minus ten dollars (\$10.00) in most cases involving monetary values. However, in cases where monetary values were generated by computer or other systemic methodology, the examiners applied a zero dollar (\$0) tolerance level in order to identify possible system errors.

Company Operations and Management

The examiners reviewed Bristol West's management, quality controls, record retention, antifraud plan, forms certification, and timely cooperation with the examination process.

Contract Forms

The examiners reviewed the following contract forms, endorsements, disclosure forms in use during the exam period for compliance with the appropriate statutes and regulations:

Form Title	Form Number	Edition Date
Personal Auto Application	CO PP00002	01/09
Personal Auto Application	CO PP00002	01/08
Personal Auto Policy - Select 2.5	CO POL-002	05/08
Prima Policy Select 1 & 2	CO PP 0001	07/07
Amendment of Policy Provisions	AM-00001	03/04
Quote Letter	CO0103	03/04
Policyholder EFT Authorization Agreement	CO0204	03/04
Form Title	Form Number	Edition Date
Uninsured/Underinsured Motorists - Election of Lower Limits	UM01 CO	05/05

**Market Conduct Examination
Examiners' Methodology**

Bristol West Insurance Company

Named Driver Exclusion Endorsement	DREX-0001	07/03
Personal Auto Policy	CO PP00001	05/08
Additional Interest Endorsement	AI-00001	06/96
Rental Expenses Endorsement	EXTR-00001	02/06
Towing and Labor Costs Coverage Endorsement	TL-00001	06/00
Customizing Equipment Endorsement	CEQ-00001	02/06
Colorado SR22	COSR-00001	03/04
Loss Payee Endorsement	LDED-00001	06/00
Summary Disclosure Form	CO SD001	01/09
Summary Disclosure Form	CO SD001	01/08
ID Card	COID00001	03/04
Bristol West Privacy Notice	PN-00001	03/04
Personal Auto Declaration	APVDEC	03/04
Personal Auto Declaration	APVDEC	05/95
Notice of Cancelation	N9	08/98
Notice of Cancelation - Company Request	N3A-00001	06/04
Notice of Cancelation - Insured Request	N3B-00001	06/04
Notice of Cancelation - Nonpayment of Premium	N3C-00001	10/06
Notice of Non-Renewal	NR-00001	03/04
Policy Rescission Notice	RC-00001	03/04
Final Cancelation Notice	N4-00001	06/04
Billing Summary	CO0507	03/04
Installment Bill	CO0608	06/04
Endorsement Bill	CO0709	03/04
Renewal Reminder	RB-00001	03/04
Notice of Premium Increase	COPI-00001	03/04
Reinstatement with Lapse Notice	RIL-00001	06/04
Reinstatement Notice	RI-00001	03/04
Underwriting Reinstatement	RIU-00001	03/04
Physical Damage Inspection Form	COINSP	05/05
Point Letter	PL-00001	07/96
Notice of Underwriting Decision and Information Practices	IP-00001	06/04
Opt Out Rights	OPT-00001	03/04
We Care About Our Customer's Privacy	PRV-00001	03/04
Broad Form Named Operator Endorsement	CO BNO-001	02/06
Notice of Premium Increase - Credit	COPIC-00001	05/08
Full Permissive User Coverage Endorsement	CO FPUCE-001	06/08
Medical Payments Rejection Form	MP01 CO	01/09
Colorado Personal Automobile Policy Endorsement	CO MPEND	01/09

Rating

Bristol West provided copies of its rates on file with the Division for the policies issued and renewed during the period under examination. The examiners reviewed and rated policies from the randomly

selected files and compared the tables and rates in Bristol West's rating algorithm to the rate filings to determine whether rating of issued and renewed policies was completed in compliance with its rate filings and with Colorado insurance laws.

New Business Applications and Renewals

The examiners randomly selected samples of newly issued policies and renewals and reviewed them to determine compliance with Colorado insurance laws and Bristol West's stated underwriting practices and manual rules. The renewal sample was selected from a subset including only those policies that renewed with a premium increase.

Cancellations, Declinations, Non-Renewals, Rescissions

The examiners reviewed a sample of files randomly selected from a combined population of cancelled and non-renewed files. The cancelled files combined with non-renewed files were from a subset including only files that were cancelled for reasons other than non-payment of premium. The examiners reviewed the sample randomly selected from that population for compliance with contractual obligations and Colorado insurance laws.

Claims

The examiners randomly selected and reviewed samples of claims from paid and denied claims populations as well as separate samples from the medical payments claims timeliness subset populations.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of thirteen (13) findings in which Bristol West was not in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

Company Operations and Management: The examiners identified two (2) areas of concern in their review of the Bristol West's operations and management.

Issue A1: Failure to retain and provide readily accessible and retrievable claims data for sampling and review of medical payments claims for timeliness of resolution as required under Colorado insurance law.

Issue A2: Failure to retain copies of required documentation in claim files, resulting in incomplete and incorrect responses to requests from examiners in a market conduct examination.

Complaints: In the area of complaints, no compliance issues are addressed in this report.

Contract Forms: The examiners identified three (3) areas of concern in their review of the Bristol West's contract forms.

Issue E1: Including in applications and policy contract forms statements and provisions that coverage may be voided for providing any false or misleading information.

Issue E2: Failure to include the notices of premium increase and notices of underwriting decisions and practices forms currently in use in the annual report certifying forms.

Issue E3: Failure to include notice of the right to replace the insurance through an assigned risk plan on premium increase notice forms.

Rating: In the area of rating, no compliance issues are addressed in this report.

New Business Applications and Renewals: The examiners identified four (4) areas of concern in the area of new business/applications/renewals.

Issue G1: Including in underwriting guidelines incorrect rules regarding acceptable and unacceptable risks, thereby allowing Bristol West to decline or exclude from coverage certain otherwise eligible individuals.

Issue G2: Increasing premiums at renewal, in some instances, due to convictions or accidents without at least one (1) incident that occurred during the fifteen (15) month period immediately preceding the renewal date.

Issue G3: Failure to disclose in premium increase notices that the choice to cover or exclude a driver from coverage was a choice between two premium increases.

Issue G4: Issuing premium increase notices at renewal that did not include specific information required under Colorado insurance law.

Cancellations, Declinations, Non-Renewals, Rescissions: The examiners identified one (1) area of concern in their review of cancellations, declinations, non-renewals and rescissions.

Issue H1: Failure, in some instances, to comply with mid-term cancellation notice requirements as set forth in Colorado insurance law.

Claims: The examiners identified three (3) areas of concern in their review of claims.

Issue J1: Failure, in some instances, to pay, deny or settle medical payments claims within the time frame required by Colorado insurance law.

Issue J2: Failure, in some instances, to pay interest on medical payments claims not paid, denied, or settled within the required time frame.

Issue J3: Failure, in some instances, to give a full written explanation of what information was needed to resolve a claim within thirty (30) calendar days after receipt of an unclear claim.

A copy of the Market Conduct Report, if adopted pursuant to § 10-1-205(3) (a), C.R.S., and any subsequent response filed by Bristol West if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

FACTUAL FINDINGS
BRISTOL WEST INSURANCE COMPANY

COMPANY OPERATIONS AND MANAGEMENT

Issue A1: Failure to retain and provide readily accessible and retrievable claims data for sampling and review of medical payments claims for timeliness of resolution as required under Colorado insurance law.

Section 10-4-642, C.R.S., Prompt payment of direct benefits - legislative declaration – definitions, states in part:

...

- (4) (d) *An insurer shall maintain claim data that is accessible and retrievable for examination by the commissioner for the current year and for the two immediately preceding years. For each claim, an insurer shall provide a claim number, date of loss, date of auto accident, date of receipt of an application for benefits, date of receipt of a claim, date of payment of a claim, and date of denial or date the claim is closed without payment. An insurer shall detail all material activities relative to a claim. A claim file shall have all material documentation relative to a claim. Each material document within a claim file shall be noted as to date received, date processed, or date sent. Detailed documentation shall be contained in each claim file to permit reconstruction of the insurer's activities relative to each claim.*

...

- (6) (a) Clean claims shall be paid, denied, or settled within thirty calendar days *after receipt by the insurer* if submitted electronically and within forty-five calendar days *after receipt by the insurer* if submitted by any other means.

...

- (c) Absent fraud, all claims other than clean claims shall be paid, denied, or settled within ninety calendar days *after receipt by the insurer*; . . . The insurer that is exempt from the ninety-day time period due to circumstances where an investigation is incomplete or otherwise needs to be continued shall pay, deny, or settle the claim within one hundred eighty days after receipt of the claim. An insurer that is exempt from the ninety-day time period shall not be exempt from payment of the interest due pursuant to subsection (7) of this section. [Emphases added.]

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109, (1), C.R.S., states in part:

...

Section 4. Records Required For Market Conduct Purposes

- A. *Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but*

not limited to, company operations and management, policyholder services, *claim's practices*, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current year plus two prior calendar years. [Emphases added.]

...

Section 6. Claim Records

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

...

- B. *Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner.* Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt. [Emphases added.]

Bristol West was not in compliance with Colorado insurance law in that it was unable to provide a date of receipt of medical payment claims in an accessible and retrievable format. The only received date Bristol West could provide that could be used for sampling was the original date of notice of the automobile loss occurrence. Claims for medical payments coverage are generally received after the automobile loss original date of notice. The inability to sort on the received date of each medical payment claim prevented examiners from readily sampling medical payments claims for review based on the number of days after receipt that the claims were paid, denied or settled. Evaluation of medical payments coverage claims under Colorado insurance law requires examiners to review medical payments claims data on the basis of the date received versus the date paid, denied or settled.

While the examiners acknowledge that the dates the medical payments claims were received could be found within the paper files, Bristol West was required under Colorado insurance law to maintain records that were accessible, retrievable and maintained in a manner so that the claim's practices could be readily ascertainable during a market conduct examination. The lack of a received date in the medical payments claim data did not allow ready identification of, and therefore ready access to and retrieval of, any claims which were paid, denied or settled outside the time frame mandated by Colorado insurance law.

It was impracticable for the examiners to review Bristol West's population of 2,837 medical payments files in aggregate for compliance. To obtain a valid sample without the received date, the examiners allowed Bristol West to manually review a series of sampled files to identify files within each sample that met the timeliness review criteria. This sampling and manual review was repeated until Bristol West identified the number of files required for a statistically valid sample of the 2,837 population of medical payments claims. This process was not in compliance with Colorado insurance law regarding prompt payment of medical payments claims and market conduct record retention.

Recommendation No. 1:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-4-642, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event Bristol West is unable to show such documentation, it shall be required to provide written evidence to the Division that it has revised its record maintenance procedures to ensure all medical payment records are maintained in such a way that the received and adjudication dates are recorded in the system and can be provided within the timeframes required by Colorado insurance law.

Issue A2: Failure to retain copies of required documentation in claim files, resulting in incomplete and incorrect responses to requests from examiners in a market conduct examination.

Section 10-1-204, C.R.S., Conduct of examinations, states in part:

...

- (2) (a) *Every company or person from whom information is sought and all officers, directors, and agents thereof shall provide to the examiners timely, convenient, and free access at reasonable hours at its offices to all books, records, accounts, papers, tapes, computer records, and other documents relating to the property, assets, business, and affairs of the company being examined. . . . The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. [Emphasis added.]*

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109, (1), C.R.S., states in part:

...

Section 3. Definitions

...

D. "Claim records" mean:

- (1) *For property and casualty: the notice of claim, claim forms, proof of loss, settlement demands, accident reports, police reports, adjusters logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, correspondence to and from insureds and claimants or their representatives regarding claim, complaint correspondence, copies of claim checks or check numbers and amounts, releases, all applicable notices, and correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.*

Section 4. Records Required For Market Conduct Purposes

- A. *Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, . . .*

...

Section 6. Claim Records

The claim records shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim records shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

- A. *The record shall include at least the notification of claim, proof of loss, (or other form of claim submission) claim forms, proof of claim payment check or draft, notes, contract, declaration pages, information on type of coverage, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, and any claim manuals or other information necessary for reviewing the claim.* Where a particular document pertains to more than one record, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document.
- B. *Documents in a claim record received from an insured, the insured's agent, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink, an electronic format, or some other permanent manner.* Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt. [Emphases added.]

Colorado Insurance Regulation 1-1-8, Penalties and Timeliness Concerning Division Inquiries and Document Requests, promulgated under the authority of §§ 10-1-109, (1), 10-2-104, 10-3-109(3), and 10-16-109, C.R.S., states in part:

...

Section 5 Rules

- A. Unless another time period is specified by the Division in writing, every person shall provide a *complete response* to an Examination Request/Comment Form within ten (10) calendar days from the date on the form.
- B. Except for responses to an Examination Request/Comment Form, and unless another time period is specified by statute, regulation or by the Division in writing, every person shall provide a *complete response* in writing to any inquiry from the Division within twenty (20) calendar days from the date of the inquiry. [Emphases added.]

Colorado Insurance Regulation 5-1-14, Penalties for Failure to Promptly Address Property and Casualty First Party Claims, promulgated under the authority of §§ 10-1-109 and 10-4-1110, C.R.S., states in part:

...

Section 4. Rules

...

B. Reasonable Investigation

The Commissioner of Insurance recognizes that the scope of an investigation can be determined, in part, to be reasonable based on the terms and conditions of the policy and the facts and circumstances of each claim. It may include, but is not limited to:

1. *Reports from police or other law or fire enforcement authorities;*
2. *Scene investigations;*
3. *Photographs, videotaped evidence;*
4. *Surveillance information;*
5. *Statements or reports from the insureds, claimants, other parties, witnesses, or anyone who may have knowledge of elements of the claim;*
6. *Repair estimates;*
7. *Reports from relevant experts;*
8. *Credit reports and financial information;*
9. *Information on prior, concurrent or subsequent claims; or*
10. *Other relevant information.*

Documentation that a reasonable investigation has been conducted shall be maintained in the claim file. Such documentation may include:

1. *Adjuster's log notes;*
2. *Copies of written communications;*
3. *Written reports used in the investigation of a claim;*
4. *Status reports;*
5. *Evidence of payments; or*
6. *Other relevant information.*

...

If the claim has not been paid because an investigation is underway, the insurer shall document in the claim file the actions being taken to investigate the claim and the efforts being made to promptly conclude the investigation.

The claim file documentation required by this regulation will be reviewed by the Division of Insurance during an investigation of a complaint or during a market conduct examination to determine if the requirements of § 10-3-1104(1) (h), C.R.S. and this regulation have been met. [Emphases added.]

Bristol West was not in compliance with Colorado insurance law in that it failed, in some instances, to retain documentation required to support its investigation and resolution of claims. The examiners found this failure to retain claims handling documentation in every sample of claims files reviewed. This failure to retain records resulted in incomplete, incorrect, untrue and misleading responses to examiners during the market conduct examination.

Bristol West received initial requests for sample files from claims populations of:

- Paid claims
- Claims closed without payment
- Medical payments claims paid or denied over forty-five (45) days after receipt of the claims
- Medical payments claims paid or denied over ninety (90) days after receipt of the claims

These initial samples included requests for all documents in the sampled claims files. During the review of the paid and denied claims files, the examiners determined numerous documents were missing from the files and at the same time noted the activity log referenced some of those documents as if stored electronically. The examiners requested copies of those documents or access to the electronic system. Bristol West elected to provide paper copies of the documents and a letter dated April 23, 2010, stating Bristol West had provided all requested documents. Bristol West's response to the examiners' subsequent request for all documents for the medical payments claims was a memo dated June 8, 2010, stating Bristol West had no additional documents to provide.

However, Bristol West's responses to comment forms listing claim files that were missing required documents included additional documents for those claim files. Therefore, the previous responses to the examiners stating all requested documents had been provided or that Bristol West had no more documents to provide were incorrect, untrue, and incomplete.

In some instances, Bristol West's responses stated the documents identified as missing were in the files but those documents did not pertain to the claims reviewed. Bristol West did not provide copies of those documents for the examiners to confirm that the documents did not pertain to the claims reviewed. Bristol West's responses were therefore incomplete.

The examiners also determined, in some instances, that the received dates Bristol West provided after a manual review of the files to obtain those dates did not match the dates of bills in the files. Responses in those instances were incorrect.

The examiners randomly selected for review 109 claim files from 10,588 private passenger auto claims paid during the examination period. The examiners also randomly selected for review 107 claims files from 3,325 private passenger auto claims denied during the examination period. The examiners randomly selected numerous samples from the 2,837 private passenger auto medical payments claims received during the examination period. Bristol West manually reviewed each file in those samples to determine whether the claim was paid, denied or settled more than forty-five (45) or more than ninety (90) days after receipt. The examiners selected for review the first 108 medical payments claim files Bristol West identified as paid, denied or settled more than forty-five (45) days after receipt and forty-six (46) medical payments claims paid, denied or settled more than ninety (90) days after receipt. Those forty-six (46) files comprised the entire population of claims paid, denied or settled more than ninety (90) days after receipt.

In their review of these samples, the examiners found the following evidence of this claims operations and management failure:

Forty (40) of the 109 paid claims reviewed were missing copies of at least one, and some were missing more than one, document required to show that a reasonable investigation was conducted for the claims. In these instances, the claims activity log noted faxes; letters or emails were sent or received but copies of those documents were not included in the files to support the activity log notes.

Paid Private Passenger Auto Claims Documentation

Population	Sample Size	Number of Exceptions	Total Error Rate
10,588*	109	40	37%

(*76% of all claims)

Documentation Missing in Paid Claims Files

Information/Documentation Missing	Number of Exceptions
Police Report	8
Faxes/Emails	11
External Communication(s)	9
Checks or Payment Logs with Check No. and Date	1
Property Damage Estimate	1
Declarations Page or Coverage/Limits Verification	9
Medical Payment Claims/Bills	2
Documentation of Anti-Steering Information	7

Seventeen (17) of the 107 denied claims files reviewed were missing one of five (5) types of documentation required for that claim and, in some instances, the files were missing more than one document. In some instances, the activity log indicated letters were sent but copies of those letters were not included in the files to support the activity log notes.

Denied Private Passenger Auto Claims Documentation

Population	Sample Size	Number of Exceptions	Total Error Rate
3,333	107	17	16%

(*24% of all claims)

Documentation Missing in Denied Claims

Information/Documentation Missing	Number of Exceptions
Police Report	3
Miscellaneous Written Communication(s)	10
Declarations Page or Coverage/Limits Verification	4
Reservation of Rights Letter	1
Documentation of Anti-Steering Information	4

Twenty-five (25) of the 108 non-electronic over forty-five (45) days medical payments claim files reviewed were missing copies of at least one document required for that claim and some were missing more than one document. In some instances, the activity log indicated faxes, letters or emails were sent but copies of those documents were not included in the files to support the activity log notes.

Medical Payments Claims Over 45 Days Documentation

Population	Sample Size	Number of Exceptions	Total Error Rate
2,837	108	25	23%

(*All Medical Payments Claims)

Documentation Missing in Medical Payments Claims over 45 Days

Information/Documentation Missing	Number of Exceptions
Closure/Denial Letter	1
Application For Benefits (AFB)	25
Miscellaneous Written Communication(s)	2

Notice of Loss	1
Initial Contact Letter	1
Medical Bills	3
Claim Activity Log	1

Eighteen (18) of the of the forty-six (46) over ninety (90) days medical payments claim files were missing copies of at least one document required for that claim and some were missing more than one document. In some instances, the activity log indicated faxes, letters or emails were sent but copies of those documents were not included in the files to support the activity log notes.

Medical Payments Claims Over 90 Days Documentation

Population	Sample	Number of Exceptions	Total Error Rate
2,837*	46**	18	37%

(*All Medical Payments Claims)

(**Total Number of Medical Payments Claims Resolved More than Ninety (90) Days after Receipt)

Documentation Missing in Medical Payments Claims Over 90 Days

Information/Documentation	Number of Exceptions
Closure/Denial Letter	2
Application for Benefits (AFB)	18
Miscellaneous Written Communication(s)	7
Initial Contact Letter	3
Medical Bills	5
Letters from Attorneys	2

Recommendation No. 2:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-1-204, C.R.S., and Colorado Insurance Regulations 1-1-7, 1-1-8 and 5-1-14. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its internal policies and procedures to ensure it retains the documentation required to show its investigation and resolution of claims, and to ensure correct and complete responses are provided to examiners during a market conduct examination.

CONTRACT FORMS

Issue E1: Including in applications and policy contract forms statements and provisions that coverage may be voided for providing any false or misleading information.

Section 10-1-128, C.R.S., Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration, states in part:

- (1) For purposes of this title, articles 40 to 47 of title 8, C.R.S., and articles 6, 7, 29.5, 32, 33, 35, 36, 38, 40, 41, 41.5, and 43 of title 12, C.R.S., a fraudulent insurance act is committed if a person *knowingly and with intent to defraud* presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, a purported insurer, or any producer thereof any written statement as part or in support of an application for the issuance or the rating of an insurance policy or a claim for payment or other benefit pursuant to an insurance policy that he or she *knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto*. . . .
[Emphasis added.]

Section 10-4-602, C.R.S., Basis for cancellation, states in part:

- (1) A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:

...

- (c) *An applicant knowingly made a false statement on the application for insurance; or*

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

...

Section 5. Rules

...

- B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

...

4. Basis for cancellation of an automobile insurance policy.

...

- c. An insurer may not rescind (i.e., cancel retroactively) a policy of insurance affording the coverages required by §§ 10-4-609, 10-4-620, and 10-4-621, C.R.S., or void such coverage *except in case of fraud*, as defined in § 10-1-128, C.R.S., *or if the insurer does not*

receive appropriate premium payment (i.e. insufficient funds) for the policy at the time of application. [Emphasis added.]

Bristol West was not in compliance with Colorado insurance law in that its application and policy forms, in some instances, allowed voiding coverage for providing false or misleading material information. Voiding at inception was permitted, according to the forms, if information was proved false at any time during the policy period. Colorado insurance law allows rescinding of policies for providing false, material information only if such false information is provided knowingly and with the intent to defraud.

Bristol West's Application included:

APPLICANT STATEMENT: I hereby apply to Bristol West Insurance Company ("Company") for a policy of insurance as set forth in this application, based on my statements, representations and promises contained herein. I declare that these statements, representations and promises are true to the best of my knowledge. *I agree that such policy shall be null and void at inception if I provide information that is false or misleading or if I omit information that would materially affect acceptance of the risk by Company.* [Emphasis added.]

Bristol West's Application Questionnaire included:

APPLICANT QUESTIONNAIRE . . . I further agree and declare that the policy of insurance, as set forth in this application, *is null and void if the statements listed above prove to be false* at any time during the policy period. [Emphasis added.]

Bristol West's Policy (Form No. CO POL-002 (05/08)) included:

MISREPRESENTATION OR FRAUD

This policy was issued in reliance on the information provided on **your** insurance application, including, but not limited to information regarding license and driving history of **you, family members**, all persons of driving age residing in **your** household, the description of the vehicles to be insured, the location of the principal place of garaging, and **your** place of residence.

We may void this policy if **you** or any insured have *concealed or misrepresented any material fact or circumstance* or engaged in fraudulent conduct, at the time application was made. **We** may void this policy or deny coverage for an **accident** or loss if **you** or any insured *have concealed or misrepresented any material fact or circumstance*, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

We may void this policy for fraud or *misrepresentation* even after the occurrence of an **accident** or loss. This means that **we** will not be liable for any claims or damages that would otherwise be covered. If **we** void this policy, it will be void from its inception (void ab initio), and no coverage will be provided whatsoever.

To the extent that **we** make payments to **you** under this policy and **our** subsequent investigation reveals **your** involvement in fraud or misrepresentation in the

presentation of a claim, **you** must indemnify **us** for all payments made. [Emphases added.]

Bristol West's Policy (CO PP 00001 (07/07) included:

FRAUD & MISREPRESENTATIONS

This policy was issued in reliance on the information provided on "your" insurance application, including, but not limited to information regarding license and driving history of "you", "family members", all persons of driving age residing in "your" household; the description of the vehicles to be insured; the location of the principal place of garaging; and "your" place of residence.

We may void this policy if "you" or any "insured" have *concealed or misrepresented any material fact or circumstance* or engaged in fraudulent conduct, at the time application was made, or during the policy period.

We may void this policy or deny coverage for an accident or loss if "you" or any "insured" have *concealed or misrepresented any material fact or circumstance*, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

We may void this policy for fraud or *misrepresentation* even after the occurrence of an accident or loss. This means that "we" will not be liable for any claims or damages that would otherwise be covered.

If "we" void this policy, it will be void from its inception (void ab initio), and no coverage will be provided whatsoever.

To the extent that "we" make payments to you under this policy and "our" subsequent investigation reveals your involvement in fraud or *misrepresentation* in the presentation of a claim, you must indemnify "us" for all payments made. [Emphases added.]

<u>Form Number</u>	<u>Name</u>	<u>Edition Date</u>
CO PP00002	Colorado Application (Included the Applicant Questionnaire)	(01/09)
Form No. CO POL-002	Personal Auto Policy-Select 2.5	(05/08)
CO PP 00001	Prima Policy-Select 1&2	(07/07)

Recommendation No. 3:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of §§ 10-1-128 and 10-4-602, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within sixty (60) days from the date this report is adopted that it has revised the language in its applications and policies to allow voiding or rescinding coverage for false or misleading material information only if the

information was provided knowingly and with intent to defraud. Within these sixty (60) days, Bristol West shall also provide the Division with specimen copies of all forms containing the revised provisions and provide the proposed date the forms will be implemented.

Issue E2: Failure to include the notices of premium increase and notices of underwriting decisions and practices forms currently in use in the annual report certifying forms.

Section 10-4-633, C.R.S., Certification of policy and notice forms states, in part:

- (1) *All insurers* providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado *shall submit an annual report* to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, *disclosure forms, notices of proposed premium increases*, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.

...

- (3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, *disclosure forms, notices of proposed premium increases*, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates. [Emphases added.]

Colorado Insurance Regulation 1-1-6, Concerning the Elements of Certification for Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act", promulgated under the authority of §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S., states in part:

...

Section 4. Definitions

For the purpose of the regulation:

- A. *"Annual Report for private passenger automobile insurance" shall mean a list of all private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases*, notices of reductions in coverage and any other such forms as requested by the Commissioner *currently in use and issued or delivered to any policyholder in Colorado*, including the titles of the programs or products affected by the forms. [Emphases added.]

...

Section 5. Rules

...

- B. Not later than July 1 of each year, *each private passenger automobile insurer . . . shall file an Annual Report of policy forms including a fully-executed certificate of compliance.* [Emphases added]

...

D. Elements of Certification

The elements of certification as determined by the Commissioner, which must be included in . . . the Colorado Automobile Private Passenger Certification Form . . . are as follows:

...

2. A statement that the officer signing the certification is knowledgeable of . . . private passenger automobile insurance . . . being certified;

...

6. A statement that the officer signing the certification form certifies:

...

- c. For Listings of New Policy Forms and Annual Reports for private passenger automobile insurance . . . that to the best of the officer's knowledge, the documents identified on the Listing of New Policy Forms or Annual Report provide all applicable mandated coverages and that such forms are in full compliance with all Colorado insurance laws and regulations;

Bristol West was not in compliance with Colorado insurance law in that it did not include the forms it issued to policyholders as notices of premium increase at renewal in its annual forms certification filing. This occurred for both increases due to credit and increases for any other reason. The accompanying notices of underwriting decisions and practices were also not included, as issued, on Bristol West's annual reports certifying forms in use. While the premium increase notice for reasons other than credit, COPI-00001, 0508, was certified as a new form in April of 2008, it was not included in either the subsequent 2008 or the 2009 annual report of forms certification filing.

The premium increase for credit included in the 2008 and 2009 annual certification filings was COPIC-00001, 05/08. Bristol West stated the premium increase due to credit form issued at renewal was the form listed in the certification filing. However, the examiner was unable to verify that since the form issued had neither a form number nor an edition date.

Bristol West listed COPI-00001, 0304, as its current premium increase notice for reasons other than credit on both the 2008 and 2009 annual reports certifying forms. Bristol West issued COPI-00001, 0508, for those premium increases at renewal.

Bristol West listed IP-0001, 0604, as its notice of underwriting decision and information practices in use on both the 2008 and the 2009 annual certification filings. Bristol West issued a 12/2007 that had no form number with premium increase notices at renewal.

<u>Form Number</u>	<u>Form Name</u>	<u>Edition Date</u>
COPI – 00001	Notice of Premium Increase	0508
None on Form	Notice of Premium Increase - Credit	None on Form
None on Form	Notice of Underwriting Decision and Information Practices	12/2007

Recommendation No. 4:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-4-633, C.R.S., and Colorado Insurance Regulation 1-1-6. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its practices and procedures to ensure that the forms in use during the certification period are listed on the annual report certifying forms and that it uses only those forms that are certified in compliance with Colorado insurance law.

Issue E3: Failure to include notice of the right to replace the insurance through an assigned risk plan on premium increase notice forms.
--

Section 10-4-629, C.R.S., Cancellation – renewal – reclassification, states in part:

- (1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or *fail to renew a policy of insurance that complies with this part 6*, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or *increase a premium for any coverage* on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

...

- (e) *The right of the insured to replace the insurance through an assigned risk plan; . . .* [Emphases added.]

Section 10-4-633, C.R.S., Certification of policy and notice forms, states in part:

...

- (2) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall also submit to the commissioner a list of any new policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner at least thirty-one days before using such policy form, endorsement, cancellation notice, renewal notice, disclosure form, notice of proposed premium increase, notice of proposed reductions in coverage, and any other form as may be requested by the commissioner. Such listing shall also contain a certification by an officer of the organization that to the best of the officer's knowledge each new policy form, endorsement, or notice form proposed to be used complies with Colorado law. *The necessary elements of the certification shall be determined by the commissioner.* [Emphasis added.]
- (3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

Bristol West was not in compliance with Colorado insurance law in that its notices of premium increase did not include the required notice of the right to replace the insurance through an assigned risk plan.

<u>Form Number</u>	<u>Form Name</u>	<u>Edition Date</u>
COPI – 00001	Notice of Premium Increase	05/08
None Provided	Notice of Premium Increase - Credit	None Provided

Recommendation No. 5:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of §§ 10-4-629 and 10-4-633, C.R.S. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within sixty (60) days from the date this report is adopted that it has revised its notices of premium increase to include notice of the right to replace the automobile insurance through an assigned risk plan as required by Colorado insurance law. Within these sixty (60) days, Bristol West shall also provide the Division with specimen copies of all forms containing the revised provisions and provide the proposed date the forms will be implemented.

UNDERWRITING – NEW BUSINESS AND RENEWALS

Issue G1: Including in underwriting guidelines incorrect rules regarding acceptable and unacceptable risks, thereby allowing Bristol West to decline or exclude from coverage certain otherwise eligible individuals.

Section 10-4-601, C.R.S., Definitions, states in part:

As used in this part 6, unless the context otherwise requires:

...

- (5) *"Insured" means the named insured, relatives of the named insured who reside in the same household as the named insured, and any person using the described motor vehicle with the permission of the named insured.*

...

- (13) *"Resident relative" means a person who, at the time of the accident, is related by blood, marriage, or adoption to the named insured or resident spouse and who resides in the named insured's household, even if temporarily living elsewhere, and any ward or foster child who usually resides with the named insured, even if temporarily living elsewhere. [Emphases added.]*

Section 10-4-626, C.R.S., Prohibited reasons for nonrenewal or refusal to write policy of automobile insurance applicable to this part 6, states in part:

- (1) *No insurer authorized to transact or transacting business in this state shall refuse to write or refuse to renew a policy of insurance affording the coverage required by operation of section 10-4-620 solely because of the age, race, creed, color, religion, sex, sexual orientation, national origin, ancestry, residence, marital status, or lawful occupation, including the military service, of anyone who is or seeks to become insured or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce this subsection (1). [Emphases added.]*

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

...

Section 5. Rules

...

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

- a. Colorado law *prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including military service*. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, . . .
[Emphases added.]

Bristol West was not in compliance with Colorado insurance law in that its underwriting guidelines incorrectly allowed it to decline to cover or exclude from coverage individuals based on lawful occupations, military status or the location of the out-of state school a student resident relative attended.

The underwriting guidelines allowed Bristol West to decline coverage:

- for any application with a driver whose occupation was a politician, celebrity or entertainer.
- for military applicants with transfer orders.

In addition, Bristol West's guidelines stated that student dependents attending school in unacceptable states must be excluded from the policy. Forty-three (43) states were listed as acceptable.

Bristol West's Colorado Private Passenger Automobile Select 2.5 Program Rule Guides stated in part:

ACCEPTABILITY

Unacceptable Insureds/Drivers

Note: *Bristol West retains the option to decline any risk.*

. . .

9. Any application with *a driver who is nationally or locally known to a large segment of the population (e.g., politician, celebrity, entertainer)*. [Emphases added.]

. . .

14. Operators who do not permanently reside in Colorado for a minimum of ten (10) months each year (migratory risks). Military risks stationed in Colorado are acceptable provided the named insured does not possess out of state transfer orders.
[Emphases added.]

Colorado Prima Program Guide stated in part:

Unacceptable Risks

Unacceptable Policies

. . .

Policies where *any applicant is target risk such as entertainers, celebrities, or any individual well known locally or nationally*.

...

Unacceptable Insureds/Drivers

...

Any driver who does not permanently reside in Colorado for a minimum of ten (10) months each year (migratory risks). Military risks stationed in Colorado are acceptable provided the named insured does not possess out of state transfer orders. [Emphases added.]

Pages 8 and 5 of the underwriting rule guides for Bristol West's Select 2.5 Program, effective 1/1/2009 and 4/30/2009, respectively, included the following instructions:

ACCEPTABILITY

...

Territory Rules for Out of State Student/Military Risks

Student

1. Students attending school in a state other than Colorado are acceptable if the state where the school is located is listed in the State Minimum Liability Limits table shown on this page. *Students attending school in an unacceptable state must be excluded from the policy. [Emphasis added.]*

Bristol West's Colorado Private Passenger Automobile Select 2.5 Program Rule Guides state in part:

ACCEPTABILITY

Unacceptable Insureds/ Drivers

Note: *Bristol West retains the option to decline any risk.*

...

9. Any application with *a driver who is nationally or locally known to a large segment of the population (e.g., politician, celebrity, entertainer).* [Emphases added.]

Colorado Prima Program Guide states in part:

Unacceptable Risks

Unacceptable Policies

...

Policies where any applicant is target risk such as entertainers, celebrities, or any individual well known locally or nationally.

Recommendation No. 6:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of §§ 10-4-601, 10-4-626, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its underwriting guidelines regarding acceptable and unacceptable risks to ensure compliance with Colorado insurance law. Within these thirty (30) days, Bristol West shall also provide the Division with specimen copies of its guidelines containing the revised provisions and provide the proposed date the revisions will be implemented.

Issue G2: Increasing premiums at renewal, in some instances, due to convictions or accidents without at least one (1) incident that occurred during the fifteen (15) month period immediately preceding the renewal date.

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

...

Section 5 Rules

...

- B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

...

3. Application of time limitations.

In reviewing protests under § 10-4-629, C.R.S., the Division of Insurance will apply the following time limitations:

- a. If the insurer bases its action upon the fact that an insured has been involved in an accident which resulted in payment under the policy and/or has been convicted of a motor vehicle violation, the insurer may base its action on convictions or accidents which occurred during the thirty-six (36) month period immediately preceding the date of the proposed action for that individual insured under the policy. However, in case of nonrenewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) month period, *at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date for each individual upon whom the proposed action is being attempted.* Cancellations are subject to the restrictions set forth in § 10-4-602, C.R.S.
- b. *An insurer may exceed the fifteen (15) month period if such renewal is the first opportunity to underwrite an additional insured, i.e., new driver in household.* The notice shall clearly indicate the date the individual was added to the policy and whether this renewal is the first opportunity to underwrite the risk. Surcharge or merit rating changes may only be made on the policy renewal date. [Emphases added.]

The examiners randomly selected 116 files from the total population of 58,590 renewals with premium increases during the examination period. However, twenty-four (24) of the renewals with premium increases were increases for credit reasons only, leaving only ninety-two (92) files to which the review of renewals with premium increases due to incidents or violations applied.

Bristol West was not in compliance with Colorado insurance law in that for twelve (12) of the ninety-two (92) files it issued premium increase notices based upon driving violations without at least one (1) violation that occurred within the fifteen (15) month period immediately preceding the renewal date. None of the twelve (12) files included evidence that the renewal was the first opportunity to underwrite an added driver.

**Premium Increases at Renewal Based on Driving Violation(s) Without One That
Occurred Within Fifteen Months of Renewal**

Population	Sample Size	Files with Increases Due to Violations	Number of Exceptions	Total Error Rate
58,590*	116	92**	12	13%

(*Renewals with Premium Increases)

(**Number of Files in the Sample of 116 Renewals that had Premium Increases due to Violations)

Recommendation No. 7:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its underwriting practices and procedures to comply with Colorado insurance law regarding application of time limitations for premium increases due to driving violations.

In addition, Bristol West shall conduct a self-audit of all renewals effective January 1, 2009, through October 21, 2011, to determine the number of policyholders whose premium was increased due to this underwriting practice and refund any additional premium charged. A report of the self-audit shall be provided to the Division no later than ninety (90) days from the date this report is adopted.

Issue G3: Failure to disclose in premium increase notices that the choice to cover or exclude a driver from coverage was a choice between two premium increases.

Section 10-4-629, C.R.S., Cancellation – renewal – reclassification, states in part:

- (1) *Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.*
- (2) *An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
- (a) *The proposed action to be taken, including, if the action is an increase in premium or a reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction.*
- ...
- (c) *The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. . . . [Emphases added.]*

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

...

Section 5 Rules

...

- B. Rules Limiting Insurers' Action to Refuse to Write, Cancel, Nonrenew, Increase Premium, Surcharge or Reduce Coverages

...

2. Notice of proposed actions

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent, in triplicate, to the insured whose incident resulted in the proposed action. The notice required by § 10-4-629(2) (c), C.R.S. shall be separate and distinct from any other information delivered to the insured, including but not limited to the renewal notice. *The statement of reasons shall be clear and specific so that a reasonable person can understand it.* The insurer shall clearly describe or quote its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

The examiners randomly selected 116 files from the total population of 53,590 renewal files with premium increases. Sixty (60) of the 116 files included notices of premium increase with an offer to exclude a driver. All sixty (60) of those notices included the amount of the premium increase at renewal due to the driving record of a covered individual. The notices also stated the amount of the premium with the driver whose driving record resulted in the proposed action excluded from coverage. However, the notices did not disclose that the premium with the driver excluded also included an increase in premium.

The notices included the statement "If you wish to avoid this premium increase, you may do so by agreeing to exclude the individual(s) listed above." The phrase "avoid this premium increase" was misleading in that it implied no increase in premium would apply if the individual was excluded from coverage. While the premium increase for covering the individual would not apply if the driver were excluded, a premium increase in the form of an "excluded driver surcharge" would apply. Bristol West did not disclose the excluded driver surcharge or the specific amount of the increase due to the surcharge.

In these notices, Bristol West was proposing to impose the "excluded driver surcharge" on policyholders who previously were not assessed such surcharges. This constituted premium increases that it was required to disclose. Bristol West was required to specify precisely why it was proposing the increase (i.e., explain that it was doing so because the policyholders elected to exclude a driver from their policies).

Whether the policyholders elected to cover the drivers or exclude the drivers, the renewal premiums were always higher than they were before the renewal. The premium increase notices failed to disclose that the premiums would be increased even if the drivers were excluded. That omission was misleading to policyholders. Policyholders making the decision to exclude drivers may have done so relying upon the language in the notice and believing they would avoid any increase to the premium when they were actually choosing between two proposed increases.

Premium Increase Notices with Excluded Driver Offers at Renewal

Population	Sample Size	Number of Files With Driver Exclusion Offers	Number of Exceptions	Total Error Rate
58,590*	116	60**	60	100%

(*All Renewals with a Premium Increase)

(**All Renewals with a Driver Exclusion Offer)

Recommendation No. 8:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within sixty (60) days from the date this report is adopted that it has revised its excluded driver offers in premium increase notices to include complete disclosure and correct information regarding the choices offered in compliance with Colorado insurance law. Within these sixty (60) days, Bristol West shall also provide the Division with specimen copies of all premium increase notices containing the revised provisions and provide the proposed date the forms will be implemented.

Issue G4: Issuing premium increase notices at renewal that did not include specific information required under Colorado insurance law.

Section 10-4-629, C.R.S., Cancellation - renewal - reclassification, states in part:

- (1) *Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.*
- (1) *An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
 - (a) *The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;*
 - (b) *The proposed effective date of the action;*
 - (c) *The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).*
 - ...
 - (e) *The right of the insured to replace the insurance through an assigned risk plan;*
 - (f) *The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice. ... [Emphases added.]*
 - ...

- (6) *If the Commissioner finds from the notice and other evidence that the protest is with or without merit . . . If the notice of the proposed action does not comply with Colorado law, the commissioner shall disallow the action. . . .* [Emphases added.]

Colorado Insurance Regulation 1-1-6, Concerning the Elements of Certification for Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act", promulgated under the authority of §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S., states in part:

. . .

Section 4. Definitions

For the purposes of this regulation:

. . .

- J. "Listing of New Policy Forms for private passenger automobile insurance" shall mean *a list* of any new private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner issued or delivered to any policyholder in Colorado *with the description of the form, the form number and edition date, the title of the program or product affected by the form, and the effective date the form will be used.* [Emphasis added.]

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

. . .

Section 5 Rules

. . .

- B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

. . .

2. Notice of proposed actions.

- a. *A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to*

be sent, in triplicate, to the insured whose incident resulted in the proposed increase. The notice required by § 10-4-629(2) (c), C.R.S. shall be separate and distinct from any other information delivered to the insured, including but not limited to the renewal notice. *The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy, or guideline which is the basis for the proposed action.* A simple recitation of the dates and incidents, without further detail, is not acceptable and may cause the insured's proposed action to be disallowed.

- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall, . . . prominently display . . . the insured's ability to protest the insurers action by mailing two copies of the notice to the Division of Insurance *within ten (10) days of receipt of said notice.* [Emphases added.]

Bristol West was not in compliance with Colorado insurance law in that it failed to include required information in its premium increase notices at renewal. All 116 renewal files reviewed included a premium increase. Bristol West issued two versions of premium increase notices during the examination period. One notice, without a form number or edition date, was used for a premium increase due to credit and the other, COPI – 00001 Edition 05/08, was used for an increase due to any other reason. Both premium increase notices issued were deficient in that:

- All 116 premium increase notices reviewed did not include a notice of the right to replace the insurance with an assigned risk plan,
- Ninety-one (91) of the 116 premium increase notices did not include a description of Bristol West's underwriting rule, policy or guideline which was the basis for the proposed action at renewal.

Thirty (30) of the 116 premium increase notices were issued due to credit information (credit notice). All thirty of the credit notices were deficient in that:

- The credit notice did not include a form number or edition date to identify it.
- The credit notice used is a one-page form which did not include information identifying the policyholder or policy to which the increase applied:
 - No policy number
 - No policyholder name
 - No policyholder address
- The credit notice did not include the renewal date or an effective date for the proposed increase.
- The credit notice did not include the date the notice was mailed.
- The credit notice did not indicate the coverages to which the proposed increase would apply.

The credit notice correctly advised of the right to protest the increase and instructed the insured to sign two copies of the notice and send them to the Commissioner of Insurance (Commissioner) to do so. The credit notice provided the Commissioner's address. However, without identifying information in the credit notice, the Commissioner would have been unable to process any protest submitted.

Lack of this information would have impeded the Commissioner from determining whether a protest had merit and could have prevented insureds from availing themselves of their right to protest. This information is essential to the protest process as well as required by Colorado insurance law,

Premium Increase Notices - Right to Replace the Insurance with an Assigned Risk Plan

Population	Sample	Number of Exceptions	Total Error Percent
58,590*	116	116	100%

(*Renewals with Premium Increases)

Premium Increase Notices - Description of Underwriting Rule

Population	Sample	Number of Exceptions	Total Error Percent
58,590*	116	91	78%

(*Renewals with Premium Increases)

Premium Increase Notices - Credit

Population	Sample	Number of Exceptions	Total Error Percent
58,590*	116	30	26%

(*Renewals with Premium Increases)

Recommendation No. 9:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-4-629, C.R.S., and Colorado Insurance Regulations 1-1-6 and 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within sixty (60) days from the date this report is adopted that it has made revisions necessary to ensure that all notices of premium increase issued to insureds are in compliance with Colorado insurance law. Such necessary revisions include, but are not limited to, revising premium increase notice forms and underwriting practices and procedures. Within these sixty (60) days, Bristol West shall also provide the Division with specimen copies of any forms revised to comply with Colorado insurance law and provide the proposed date the revised forms and procedures will be implemented.

Cancellations, Declinations, Non-Renewals, Rescissions

Issue H1: Failure, in some instances, to comply with mid-term cancellation notice requirements as set forth in Colorado insurance law.

Section 10-4-603, C.R.S., Notice, states in part:

- (1) *No notice of cancellation of a policy to which section 10-4-602 applies shall be valid unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation; . . . Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. As used in this section, "premium due date" means the date that a premium that has been previously paid is fully earned. . . .* [Emphases added.]

Section 10-4-629, C.R.S., Cancellation - renewal - reclassification, states in part:

. . .

- (2) *An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
- (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
 - (b) The proposed effective date of the action;
 - (c) *The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry.* Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).
 - (d) If there is coupled with the notice an offer to continue or renew the policy in accordance with this section, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;
 - (e) The right of the insured to replace the insurance through an assigned risk plan;

- (f) *The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice; . . . [Emphases added]*

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated under the authority of §§ 10-1-109, 10-4-601.5, 10-4-625 and 10-4-628(4), C.R.S., states in part:

. . .

Section 5 Rules

. . .

- B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

. . .

2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent, in triplicate, to the insured whose incident resulted in the proposed action. The notice required by § 10-4-629 (2) (c), C.R.S. shall be separate and distinct from any other information delivered to the insured, including but not limited to the renewal notice. *The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action.* A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.
- b. *Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall, set apart and prominently display as the first sentence of the "Your Right to Protest" paragraph the insured's ability to protest the insurers action by mailing two copies of the notice to the Division of Insurance within ten (10) days of receipt of said notice.*
- c. *Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest", the following premium payment instructions:*

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

The insurer shall accept an insured's payment provided such payment is in accordance with the current premium payment plan.

...

3. Application of time limitations.

In reviewing protests under § 10-4-629, C.R.S., the Division of Insurance will apply the following time limitations:

- a. If the insurer bases its action upon the fact that an insured has been involved in an accident which resulted in payment under the policy and/or has been convicted of a motor vehicle violation, the insurer may base its action on convictions or accidents which occurred during the thirty-six (36) month period immediately preceding the date of the proposed action for that individual insured under the policy. However, in case of nonrenewals, increase in premiums, or reduction in coverage, in order to take action upon incidents occurring during this thirty-six (36) month period, at least one (1) incident must have occurred during the fifteen (15) month period immediately preceding the next renewal date for each individual upon whom the proposed action is being attempted. Cancellations are subject to the restrictions set forth in § 10-4-602, C.R.S.

...

4. Basis for cancellation of an automobile insurance policy.

- a. Except in the case of a renewal policy, an insurer may cancel a policy that has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer. Any such notice of cancellation may not be based on any of the prohibited reasons listed in § 10-4-626, 10-4-627, 10-4-628 and 10-4-629, C.R.S. Notice requirements for such cancellations are governed by policy termination provisions. At least a ten (10) day advance notice before the cancellation effective date is required.
- b. In the case of policies which have been in effect for more than sixty (60) days, *an insurer may cancel a policy affording the coverages*

required by § 10-4-620, C.R.S., only if the cancellation is based upon one of the following reasons:

- (1) Nonpayment of premium (§ 10-4-602, C.R.S.); or*
- (2) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household, or who customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period, or if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date (§ 10-4-602, C.R.S.); or*
- (3) The applicant knowingly made a false statement on the application for insurance (§ 10-4-602(1) (c), C.R.S.); or*
- (4) The insured knowingly and willfully made a false material statement on a claim submitted under the policy (§ 10-4-602(1) (d), C.R.S.). [Emphases added.]*

Bristol West was not in compliance with Colorado insurance law in that seven (7) of the eighteen (18) mid-term cancellations files reviewed had exceptions and some files included more than one exception:

- Bristol West failed to send notices of the right to protest the cancellation for four (4) of the seven (7) files when required.
- Bristol West failed to give the correct reason for cancellation for three (3) files.
- Bristol West failed to give thirty days' advance notice of cancellation for two (2) files.
- Bristol West failed to include the underwriting rule, policy or guideline which was the basis for the cancellation in seven (7) files.
- Bristol West failed to offer to exclude a driver with multiple drivers on the policy for one (1) file.

Mid-Term Cancellations

Population	Sample Size	Number of Exceptions	Total Error Rate
18*	18	7	39%

(*All Mid-term Cancellations on Policies not Declined Within the First Sixty (60) Days)

Recommendation No. 10:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered to be in violation of §§ 10-4-603 and 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its underwriting guidelines, practices and procedures to ensure all mid-term cancellation notices are issued in compliance with Colorado insurance law.

CLAIMS

Issue J1: Failure, in some instances, to pay, deny or settle medical payments claims within the time frame required by Colorado insurance law.

Section 10-4-642, C.R.S, Prompt payment of direct benefits – legislative declaration – definitions, states in part:

...

(2) (c) “Clean claim” means:

(I) *A claim where there is no additional information needed by the insurer to accept or deny the claim. A claim requiring additional information shall not be considered a clean claim and shall be paid, denied or settled as set forth in paragraph (b) of subsection (6) of this section.*

(II) *A claim form that is submitted with, or after submission of, a properly executed application form for benefits currently used by the insurer by the policyholder, insured, or injured person entitled to benefits.*
[Emphases added.]

...

(6) (a) *Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt by insurer if submitted by any other means.*

(b) If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. . . . *If such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within thirty days after receipt of additional information or after the applicable time period set forth in paragraph (c) of this subsection (6).*

(c) *Absent fraud, all claims other than clean claims shall be paid, denied, or settled within ninety calendar days after receipt by the insurer; . . .*
[Emphases added.]

Bristol West was not in compliance with Colorado insurance law in that forty-five (45) of 108 non-electronic claims randomly selected from the total population of 2,837 medical payments claims adjudicated more than forty-five (45) days after receipt were clean claims and were not paid, denied or settled within the required time frame.

Medical Payments Non-electronic Claims Over 45 Days – Late Adjudication

Population	Sample	Number of exceptions	Total Error Percent
2,837*	108	45	42%

(*All Medical Payments Claims)

The examiners reviewed the entire population of forty-six (46) claims adjudicated more than ninety (90) calendar days after receipt of the claim. There was no indication in the claim records that any of the cited claims involved fraud. Absent fraud, all claims, other than clean claims, are to be paid, denied, or settled within ninety (90) calendar days of receipt.

Bristol West was not in compliance with Colorado insurance law in that twenty-two (22) of forty-six (46) medical payments claims adjudicated more than ninety (90) calendar days after receipt were claims that were not paid, denied or settled within the required time frame.

Medical Payments Claims Over 90 Days - Late Adjudication

Population	Sample	Number of Exceptions	Total Error Percent
2,837*	46**	22	48%

(*All Medical Payments Claims)

(**Entire Population of Medical Payments Claims Over 90 Days)

Recommendation No. 11:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered to be in violation of §10-4-642, C.R.S. In the event Bristol West is to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its claims practices to ensure that medical payments claims are paid, denied or settled within the required time frame in compliance with Colorado insurance law.

Issue J2: Failure, in some instances, to pay interest on medical payments claims not paid, denied, or settled within the required time frame.

Section 10-4-642, C.R.S, Prompt payment of direct benefits – legislative declaration – definitions, states in part:

...

(2) (c) “Clean Claim” means:

(I) *A claim where there is no additional information needed by the insurer to accept or deny the claim. A claim requiring additional information shall not be considered a clean claim and shall be paid, denied or settled as set forth in paragraph (b) of subsection (6) of this section.*

(II) *A claim form that is submitted with, or after submission of, a properly executed application form for benefits currently used by the insurer by the policyholder, insured, or injured person entitled to benefits.*

...

(6) (a) *Clean claims shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt by insurer if submitted by any other means.*

(b) *If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. . . .*

...

(7) *An insurer that fails to pay, deny, or settle a clean claim in accordance with paragraph (a) of subsection (6) of this section or fails to take other required action within the time periods set forth in paragraph (b) of subsection (6) of this section shall be liable for the covered benefit and, in addition, shall pay to the claimant interest at a rate of ten percent per annum for the first one hundred and eighty days and at a rate of fifteen percent per annum thereafter, on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to subsection (6) of this section.*

Bristol West was not in compliance with Colorado insurance law, in some instances, in its handling of clean non-electronic medical payments claims on which interest payments are owed. The examiners determined that of the 108 claims randomly selected from the total population of 2,837 medical payments claims adjudicated more than forty-five (45) days after receipt, forty-three (43) were clean claims adjudicated late for which interest was owed but not paid.

Non-electronic Medical Payments Claims Over 45 Days - Interest

Population	Sample	Number of exceptions	Total Error Percent
2,837*	108	43	40%

(*All Medical Payments Claims)

The examiners reviewed the entire population of forty-six (46) medical payments claims adjudicated more than ninety (90) calendar days after receipt of the claim.

Bristol West was not in compliance with Colorado insurance law, in some instances, in that eleven (11) claims were not paid within ninety (90) days of receipt and interest was owed but not paid. There was no indication in the claim records that any of the cited claims involved fraud. One (1) of those late payments was a single payment for multiple bills received at different times. The interest calculations were based on the date received for each bill.

Claims Over 90 Days - Interest

Population	Sample	Number of exceptions	Total Error Percent
2,837*	46**	11	24%

(*All Medical Payments Claims)

(**Total Number of Medical Payments Claims Over 90 Days)

Recommendation No. 12:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered to be in violation of §10-4-642, C.R.S. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its claims practices to ensure proper payment of interest on medical payments claims for which interest is owed in compliance with Colorado insurance law.

In addition, Bristol West shall conduct a self-audit of all medical payments claims received January 1, 2009, through October 21, 2011, to determine the number of claims paid late for which interest was owed but not paid. Bristol West shall pay any interest owed on each claim to the appropriate individual and provide a report of the self-audit to the Division no later than ninety (90) days from the date this report is adopted.

Issue J3: Failure, in some instances, to give a full written explanation of what information was needed to resolve a claim within thirty (30) calendar days after receipt of an unclear claim.

Section 10-4-642, C.R.S, Prompt Payment of Direct Benefits – legislative declaration – definitions, states in part:

...

- (6) (b) *If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give to the claimant a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim.* The person receiving a request for such additional information shall submit all additional information requested by the insurer within thirty calendar days after receipt of such request. The insurer may deny a claim if a provider receives a request for additional information and fails to timely submit additional information requested under this paragraph (b), subject to the resubmittal of the claim or terms of the policy. If such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within thirty days after receipt of additional information or after the applicable time period set forth in paragraph (c) of this subsection (6). [Emphasis added.]

Colorado insurance law requires insurers to request additional information needed to adjudicate a medical payments claim within thirty (30) calendar days after receipt of the claim, to make such request in writing and to include a full explanation in that request of what is needed to resolve that claim.

In some instances, Bristol West was not in compliance with Colorado insurance law in that twenty-five (25) of the 108 non-electronic over forty-five (45) day claim files randomly selected for review from the total population of 2,837 medical payments claims were unclear claims for which additional information was required for Bristol West to determine its liability. However:

- Twelve (12) files did not contain any documentation that a written request for additional information needed to adjudicate the claim was sent to the claimant,
- In twelve (12) files, the request for additional information was sent more than thirty (30) calendar days after Bristol West's receipt of the claim, and
- In one (1) file the written request for additional information was not specific as to what information was needed.

Claims Over 45 Days - Pending Notices

Population	Sample	Number of exceptions	Total Error Percent
2,837*	108	25	23%

(*All Medical Payments Claims)

The examiners reviewed the entire population of forty-six (46) medical payments claims adjudicated more than ninety (90) calendar days after receipt of the claim.

Bristol West was not in compliance with Colorado insurance law in that seventeen (17) of the forty-six (46) over ninety (90) day claim files were unclean claims for which additional information was required for Bristol West to determine its liability. However:

- Eleven (11) files did not contain any documentation that a written request for additional information needed to adjudicate the claim was sent to the claimant, and
- In six (6) files, the request for additional information was sent more than thirty (30) calendar days after Bristol West received the claim.

Claims Over 90 Days - Pending Notices

Population	Sample	Number of exceptions	Total Error Percent
2,837*	46**	17	37%

(*All Medical Payments Claims)

(**Total Number of Medical Payments Claims Over 90 Days)

Recommendation No. 13:

Bristol West shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered to be in violation of §10-4-642, C.R.S. In the event Bristol West is unable to show such documentation, it shall be required to submit written evidence to the Division within thirty (30) days from the date this report is adopted that it has revised its medical payments claims practices to ensure that, within thirty (30) calendar days after receipt of an unclean claim, it sends a full explanation in writing of what additional information is needed to resolve the claim in compliance with Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS	REC. No.	PAGE No.
COMPANY OPERATIONS-MANAGEMENT		
Issue A1: Failure to retain and provide readily accessible and retrievable claims data for sampling and review of medical payments claims for timeliness of resolution as required under Colorado insurance law.	1	19
Issue A2: Failure to retain copies of required documentation in claim files, resulting in incomplete and incorrect responses to requests from examiners in a market conduct examination.	2	25
CONTRACT FORMS		
Issue E1: Including in applications and policy contract forms statements and provisions that coverage may be voided for providing any false or misleading information.	3	29
Issue E2: Failure to include the notices of premium increase and notices of underwriting decisions and practices forms currently in use in the annual report certifying forms.	4	33
Issue E3: Failure to include notice of the right to replace the insurance through an assigned risk plan on premium increase notice forms.	5	35
NEW BUSINESS AND RENEWALS		
Issue G1: Including in underwriting guidelines incorrect rules regarding acceptable and unacceptable risks, thereby allowing Bristol West to decline or exclude from coverage certain otherwise eligible individuals.	6	40
Issue G2: Increasing premiums at renewal, in some instances, due to convictions or accidents without at least one (1) incident that occurred during the fifteen (15) month period immediately preceding the renewal date.	7	42
Issue G3: Failure to disclose in premium increase notices that the choice to cover or exclude a driver from coverage was a choice between two premium increases.	8	45
Issue G4: Issuing premium increase notices at renewal that did not include specific information required under Colorado insurance law.	9	49
CANCELLATIONS		
Issue H1: Failure, in some instances, to comply with mid-term cancellation notice requirements as set forth in Colorado insurance law.	10	54
CLAIMS		
Issue J1: Failure, in some instances, to pay, deny or settle medical payments claims within the time frame required by Colorado insurance law.	11	57
Issue J2: Failure, in some instances, to pay interest on medical payments	12	59

claims not paid, denied, or settled within the required time frame.			
Issue J3:	Failure, in some instances, to give a full written explanation of what information was needed to resolve a claim within thirty (30) calendar days after receipt of an unclear claim.	13	61

Examination Report Submission

State Market Conduct Examiners

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And

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And

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Submit this report this 21st day of October, 2011, on behalf of

**The Colorado Division of Insurance
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